UNCLOS AND PREVENTION OF MARINE POLLUTION IN THE ARCTIC

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Organization

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2. Maritime Zones and Passage Regimes in the Arctic
3. Polar Code – Ship-Source Pollution
4. Pollution from Offshore Oil and Gas Activities
PART 1

UNCLOS as the Framework Convention
Importance of UNCLOS

• Universally accepted (except for USA)
• Parties must accept Provisions on Environment in Part XII and on Settlement of Disputes in Part XV
• Provisions of UNCLOS being interpreted in light of developing principles of international environmental law
• Principles and rules governing States are more clear and certain because they are set out in UNCLOS
The law of the sea provides for important rights and obligations concerning the protection of the marine environment, ice-covered areas, freedom on navigation, marine scientific research and other uses of the sea.

This framework provides a solid foundation for responsible management by the five coastal States and other users of this Ocean through national implementation and application of relevant provisions.

Therefore, we see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean.
Article 194(1) General Obligation to prevent pollution of marine environment

- Article 194(1) imposes a general obligation on States to take all measures consistent with UNCLOS that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities.

- “Pollution of the marine environment” is defined in Article 1
1. “Due Diligence” obligation - to ensure that activities under jurisdiction and control do not cause pollution of the marine environment

2. Environmental Impact Assessment – when significant risk of serious pollution

3. Duty to Cooperate - when significant risk of transboundary pollution

4. Precautionary Approach – part of due diligence obligation
Specific Obligations

- Pollution from Vessels – Articles 211, 217-220
- Pollution from Dumping – Articles 210 & 216
- Pollution from Seabed Activities subject to national jurisdiction – Articles 208 & 214
- Pollution from Land-Based Sources – Article 207 & 213
- Pollution from or through the Atmosphere – Articles 212 & 222
Incorporation by Reference of IMO Conventions

- UNCLOS provisions on Pollution from Vessels require flag States to adopt laws and regulations that have at least the same effect as that of generally accepted international rules and standards established by the IMO
  - MARPOL 73/78: International Convention on the Prevention of Pollution from Ships

- UNCLOS provisions on Pollution by Dumping require States to adopt laws and regulations and take other measures that are no less effective than the global rules and standards
  - 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter
PART 2

Maritime Zones and Passage Regimes in the Arctic
Expanding Ship Operations in the Arctic Ocean

Straits Used for International Navigation

- If main passage routes governed by Part III of UNCLOS on Straits used for International Navigation, all States have a Right of Transit Passage through the Strait
- Ships exercising right of transit passage much comply with IMO Conventions on safety of navigation and ship-source pollution
- Coastal States can impose stricter measures only if they obtain the approval of the IMO
Options under IMO Conventions

- Routeing Measures in Straits used for international navigation
- Specially designated Arctic marine areas
  - MARPOL Special Areas
  - Particularly Sensitive Sea Areas
- Emission Control Areas
- Ballast water management
- Arctic Marine Traffic System
  - Routeing, reporting and VTS systems
Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance.

Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.
# National Arctic Legislation

## CANADA

- Arctic Waters Pollution Prevention Act 1970
  - Arctic Waters Pollution Prevention Regulations
  - Arctic Shipping Pollution Prevention Regulations

- Canada Shipping Act 2001
- Ice Navigation in Canadian Waters (CCG)

## RUSSIA

- Navigation along the waterways of the Northern Sea Route (NSR), article 14 of Federal Act 1998
  - Regulations for Navigation on the Seaways of the NSR 1990 (under revision)
  - Regulations for Icebreaker-Assisted Pilotage of Vessels on the NSR, 1996
  - Requirements for Design, Equipment, and Supply of Vessels Navigating the NSR, 1996

Source: V.M. Santos-Pedro, Transport Canada 2008
• Russia and the US border the Bering Strait and have a common interest in the safety of navigation through the Strait

• Under UNCLOS and the SOLAS convention the two States could propose a routeing system through the strait, but it would have to be submitted to the IMO for approval

• Also, the eastern and western approaches to the Strait are less than 24 nm wide, so they would be subject to the provisions in Part III of UNCLOS on Straits used for International Navigation
PART 3

Polar Code
Background – Marine Environment in the Arctic

- The cold sea and cold air reduces the rates of chemical and biological processes – therefore, releases are destroyed by natural processes more slowly compared than in warmer environments.
- The presence of floating ice may result in longer range transport of discharged materials or non-indigenous species compared to ice-free environments.
- Seasonal variations are greater in polar regions than elsewhere.
- Polar region ecosystems may not be able to adapt to changes to the environment (unique vulnerability).
- Polar regions have low atmospheric interchange and historically have a low rate of change.
POLAR CODE - International Code for Safety of Navigation in Polar Waters

- Being drafted by IMO Subcommittee on Ship Design and Equipment (DE)
- Correspondence Group led by Norway
- Intersessional Working Group established in 2013
- Polar Code Working Group established in 2014
- To be mandatory, through amendment to SOLAS and MARPOL
- To be submitted to MEPC in 2014, but not yet finalized
Sub-Committee on Ship Design & Construction (SDC) met in January 2014 and agreed in principle to the draft text of Polar Code.

The SDC also agreed in principle to propose draft amendments to IMO’s safety and pollution prevention treaties to make the Polar Code mandatory:

- SOLAS Convention on safety of maritime navigation
- MARPOL Convention on ship-source pollution
Geographic Area for Polar Code

Source: Guidelines for Ships Operating in Polar Waters, IMO Resolution A.1024(26), Dec. 2, 2009, p. 9, fig. 1
Challenges

• Prepare Accurate Navigational Charts
• Improvement of Search and Rescue System
• Improve Oil Spill Preparedness and Response Planning
• Adopt mandatory requirements for safe manning of ships – qualifications and special training for seafarers
PART 4

Pollution from Offshore Oil and Gas Activities
OPENING UP THE FAR NORTH

Maritime areas claimed by:
- Russia
- Denmark
- Russia and Denmark
- United States
- Canada

- Mining
- Gas and oil extraction

Sea routes that can come into permanent use if the ice cap continues to recede

Maritime jurisdiction boundaries

Military presence

SOURCE: PHILIPPE REKACEWICZ, LE MONDE DIPLOMATIQUE
Seabed Activities subject to National Jurisdiction

- Article 208 provides that States shall adopt laws and regulations and take other measures that are *no less effective than* the international rules, standards, and recommended practices and procedures.

- However, the international community has not established the global rules and standards called for in Article 208.
Arctic Council: “Soft law” on offshore Oil & Gas activities

- 2007 Assessment of Oil and Gas Activities in the Arctic
  - Report of the Arctic Monitoring and Assessment Program (AMAP)
- 2009 Guidelines on Arctic offshore oil and gas activities
Thanks for your attention

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